

REMARKS

Claims 1-29, 31-35, 41-42 and 44-50 were pending and claims 23, 26, 29, 31, 33, 35, 41, 42 and 44 were withdrawn.

Applicant has amended claims 1-9 to insert the limitation of claim 19. The amended claims are fully supported by the specification (e.g., page 6, lines 8-14) and originally filed claims 1-9 and 19.

Applicant has amended claims 12-18 to improve their form and to more particularly point out the claimed invention. Accordingly, no new matter has been introduced.

Applicant has cancelled claims 19, 22-29, 31-35, 41, 42, and 44 without prejudice to Applicant's right to pursue the subject matter of these claims in this or another application.

Applicant respectfully requests reconsideration in view of the amendments made herein and the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the prior Office Action.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. Applicant acknowledges with appreciation that Applicant's submission filed on December 8, 2008 has been entered.

Election/Restriction

2. Applicant acknowledges that claims 23, 26, 29, 31, 33, 35, 41, 42, and 44 are withdrawn.

Double Patenting Rejection

3-4. Claims 1-22, 24, 25, 27, 28, 32, 34, and 45-50 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-14 of copending application no. 11/127,438.

Applicant submits that, pursuant to MPEP § 804,

[i]f a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

As the instant application is the earlier filed application and this provisional rejection will be the only remaining rejection after Applicant's amendments are entered, Applicant respectfully requests that the Examiner withdraw the rejection and allow the case to issue without a terminal disclaimer.

Rejection Under 35 U.S.C. § 103

5. Claims 1-10, 18, 22, 24, 25, 27, 28, 32, and 34 are rejected under 35 U.S.C. § 103 (a) as allegedly being unpatentable over Drouin (J. Immunol. [2001] 166:2025-2032). The Examiner states that Drouin teaches that C5a receptors are increased on bronchial epithelial and smooth muscle cells in sepsis and in asthma and that septic primates and rats treated with anti-C5a antibodies have reduced pulmonary edema and lung injury. The Examiner argues that it would have been obvious to a person of ordinary skill in the art to treat subjects with asthma using an antibody that inhibits C5 or C5a based on the teachings of Drouin.

While Applicant strongly disagrees with the Examiner's position, solely to expedite prosecution, claims 1-9 (and thereby claims 10-18 and 45-48 depending therefrom) have herein been amended to insert the limitation of claim 19 reciting an anti-C5 antibody in

combination with a member selected from the group consisting of steroids, anti-IgE antibodies, anti-IL-4 antibodies, anti-IL-5 antibodies, β 2 adreno receptor agonists, leukotriene inhibitors, 5 Lipxygenase inhibitors, PDE inhibitors, CD23 antagonists, IL-13 antagonists, cytokine release inhibitors, histamine H1 receptor antagonists, anti-histamines and histamine release inhibitors. As noted above, the amended claims are fully supported by the specification (*e.g.*, page 6, lines 8-14) and originally filed claims 1-9 and 19. Applicant does not concede to any aspect of the Examiner stated reasons for rejection.

Claim 19 was not rejected by the Examiner under § 103. Incorporation of the limitations of claim 19 into claims 1-9 should therefore overcome this rejection. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Claims 22, 24, 25, 27, 28, 32, and 34 have been cancelled rendering the rejection of these claims moot.

6. Claims 11-13, 15 and 16 are rejected under 35 U.S.C. § 103 (a) as allegedly being unpatentable over Drouin (J. Immunol. [2001] 166:2025-2032) further in view of Fitch et al. The Examiner states that Drouin does not teach the treatment of human subjects and the h5G1.1 antibody, but that Fitch et al. does. The Examiner argues that it would have been obvious to a person of ordinary skill in the art to use the h5G1.1 antibody to treat airway inflammation in a human target, such as one with asthma.

While Applicant does not concede to any aspect of the Examiner's stated reasons for rejection, solely to expedite prosecution, Applicant has amended claims 1-9 (and therefore dependent claims 11-13, 15 and 16) to insert the limitation of claim 19. As discussed *supra*, claim 19 was not rejected under § 103 and thus the amendments made herein obviate the rejection of claims 1-9 and the claims dependent therefrom.

Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

7. Claims 17 and 45-48 are rejected under 35 U.S.C. § 103 (a) as allegedly being unpatentable over Drouin (J. Immunol. [2001] 166:2025-2032) and further in view of US Patent 4,228,795 ('795 patent) to Babington. The Examiner states that Drouin does not teach a disperser, but that the '795 patent teaches a nebulizer. The Examiner argues that it would have been obvious to a person of ordinary skill in the art to use the nebulizer taught by the '795 patent to administer the anti-C5a antibodies taught by Drouin.

While Applicant does not concede to any aspect of the Examiner's stated reasons for rejection, solely to expedite prosecution, Applicant has amended claims 1-9 (and therefore dependent claims 17 and 45-48) to insert the limitation of claim 19. As discussed *supra*, claim 19 was not rejected under § 103.

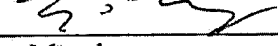
Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that all grounds for rejection have been overcome and the pending claims are now in condition for allowance. Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at 617-951-7000. Please charge any fees or credit any overpayments to our Deposit Account No. 18-1945 from which the undersigned is authorized to draw, under order no. ALXN-P01-102.

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Respectfully submitted,

By 
Ryan Murphey
Registration No.: 61,156
ROPES & GRAY LLP
One International Place
Boston, Massachusetts 02110-2624
(617) 951-7000
(617) 951-7050 (Fax)
Attorneys/Agents For Applicant